

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RANDY P. STOUT, a married person  
in his separate estate,

Plaintiff,

v.

HEALTH MANAGEMENT ASSOCIATES,  
INC., a Florida corporation;  
YAKIMA HMA, INC., a Washington  
corporation, individually and  
doing business as YAKIMA  
REGIONAL MEDICAL AND CARDIAC  
CENTER; ANGELA BEAUDRY and JOHN  
DOE BEAUDRY, husband and wife;  
BRIAN WEISH, a single person;  
CORRINE MURPHY-HINES, and JOHN  
DOE HINES, husband and wife

Defendants.

NO. CV-10-3080-EFS

**ORDER GRANTING AND DENYING  
IN PART DEFENDANTS' MOTION  
TO DISMISS**

A hearing occurred on March 25, 2011, in Richland, Washington on Defendants' Motion to Dismiss Certain Claims for Failure to State a Claim Under Rule 12(b)(6).<sup>1</sup> (ECF No. [19](#).) Defendants<sup>2</sup> seek dismissal of three

<sup>1</sup> Plaintiff Randy P. Stout was represented by Kenyon Luce and Chris Constantine. Paula Lehmann appeared on behalf of Defendants' Health Management Associates, Inc. (HMA), Yakima HMA, Inc., Yakima Regional Medical and Cardiac Center ("Yakima Regional"), and Corrine Murphy-Hines.

<sup>2</sup> When the motion was filed, only Defendants Yakima Regional and Murphy-Hines had been served. The other two individual Defendants have

1 of the Amended Complaint's ("Complaint") four claims: 1) interference  
2 with the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §  
3 1140; 2) outrage; and 3) defamation. And the individual Defendants ask  
4 the Court to dismiss the Washington Law Against Discrimination (WLAD),  
5 RCW 49.60.040, claim as it relates to them. Plaintiff Randy Stout  
6 largely opposes the motion. After reviewing the submitted material and  
7 relevant authority and hearing from counsel, the Court is fully informed.  
8 For the reasons given below, the Court grants and denies in part the  
9 motion: the ERISA section 510 claim is dismissed, the WLAD claim against  
10 Defendant Weish is dismissed, and all other claims survive dismissal.

11 **A. Background<sup>3</sup>**

12 Fifty-two-year-old Plaintiff worked for Yakima HMA, which does  
13 business as Yakima Regional, as a respiratory therapist for twenty-eight  
14 years. (ECF No. 3 ¶¶ 3.1 & 3.2.) Plaintiff received favorable  
15 performance reviews, salary increases and bonuses, and increased  
16 management responsibilities. *Id.* ¶ 3.3. He participated in the  
17 retirement and health insurance benefits plans offered by Yakima  
18 Regional, which is a subsidiary of HMA, and his interest in the  
19 retirement plan was fully vested. *Id.* ¶¶ 3.8 & 3.9.

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22 now been served. The Court understands the now-served individual  
23 Defendants join in this motion without prejudice to their ability to file  
24 motions to dismiss based on other grounds.

25 <sup>3</sup> The "background" section is based on the Complaint's (ECF No. 3)  
26 factual allegations. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949  
(2009).

1 In November 2008, Yakima Regional manager Defendant Angela Beaudry  
2 informed Plaintiff that a coworker complained that Plaintiff acted  
3 inappropriately, an investigation would occur, and he was suspended from  
4 work until the investigation was complete. *Id.* ¶¶ 1.7 & 3.4. On  
5 November 18, 2008, Defendants Beaudry and Murphy-Hines, who is also a  
6 Yakima Regional manager, informed Plaintiff that the investigation showed  
7 that he had an inappropriate relationship with a coworker because he had  
8 gone to a bar with that coworker; this relationship was termed  
9 inappropriate notwithstanding the fact that Yakima Regional did not have  
10 a policy prohibiting employee relationships outside of work. *Id.* ¶¶ 1.7,  
11 3.5, & 3.6. Plaintiff responded that his contact with the coworker was  
12 merely a social encounter. *Id.* ¶ 3.5. Later, Defendant Beaudry informed  
13 Plaintiff that his employment was terminated. *Id.* ¶ 3.6.

14 Defendants filled Plaintiff's position with a younger employee. *Id.*  
15 ¶¶ 3.1 & 3.8. Defendants also disclosed to other Yakima Regional  
16 employees and third parties that Plaintiff had an inappropriate  
17 relationship with a coworker. *Id.* ¶ 7.5. As a result of Defendants'  
18 actions, Plaintiff suffered emotional distress, lost income, impairments  
19 to his credit rating, and incurred medical expenses.

20 Plaintiff filed this lawsuit on September 17, 2010. (ECF No. 1.)  
21 Plaintiff seeks restitution and/or damages for his suffered damages under  
22 1) ERISA section 510, 2) WLAD, and 3) the common law torts of outrage  
23 and defamation. (ECF No. 3.) On December 3, 2010, Defendants filed the  
24 instant dismissal motion. (ECF No. 19.)

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**B. Dismissal Standard**

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the pleadings. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A complaint may be dismissed for failure to state a claim under Rule 12(b)(6) where the factual allegations do not raise the right to relief above the speculative level. *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009); *Bell Atl. v. Twombly*, 550 U.S. 544, 555 (2007). Conversely, a complaint may not be dismissed for failure to state a claim where the allegations plausibly show that the pleader is entitled to relief. *Twombly*, 550 U.S. at 555. In ruling on a motion under Rule 12(b)(6), a court must construe the pleadings in the light most favorable to the plaintiff and accept all material factual allegations in the complaint, as well as any reasonable inferences drawn therefrom. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

**C. Authority and Analysis****1. ERISA Claim**

Defendants ask the Court to dismiss the ERISA claim because 1) it can only be brought against the employer and not individuals or a parent company, and 2) the Complaint fails to plead that Yakima Regional had a specific intent to interfere with Plaintiff's employment benefits. The Court agrees with both of these arguments.

An ERISA action may only be pursued against the employer. Here, Plaintiff's employer was Yakima Regional: the entity where he worked. See ECF No. 3, ¶ 3.8 ("The retirement plan in which plaintiff participated as an employee of defendant [Yakima Regional] . . . ."). Accordingly, the individual Defendants were not Plaintiff's employer and,

1 therefore, Defendants' motion is **granted in part**: the ERISA claim against  
2 the individual Defendants is dismissed. *Cf. Gordon v. Am.'s Collectibles*  
3 *Network, Inc.*, 2010 WL 925785 (E.D. Tenn. Mar. 8, 2010) (dismissing ERISA  
4 section 510 claim against individual defendants).

5 Also, ERISA only allows a claim to be brought against the employer's  
6 parent company when there are facts supporting corporate-veil piercing.  
7 *See Stark v. Audio Mktg. Solutions, Inc.*, 2010 WL 3789572, \*3 (D. Neb.  
8 Sept. 21, 2010) (recognizing that, absent corporate veil-piercing,  
9 corporate officers are not liable for ERISA obligations); *Richardson v.*  
10 *CSS Indus., Inc.*, 2009 WL 2230761, \*3-4 (E.D. Pa. Jul. 27, 2009)  
11 (discussing that parent corporation's corporate veil can be pierced if  
12 plaintiff pleads and later proves facts showing that veil piercing is  
13 appropriate). Because the Complaint's allegations are insufficient to  
14 pierce HMA's corporate veil, Defendants' motion is **granted in part** and  
15 the ERISA claim against HMA is dismissed. *See Chadwick Farms Owners*  
16 *Ass'n v. FHC LLC*, 166 Wn.2d 178, 200 (2009) (setting forth the two  
17 corporate veil-piercing elements).

18 Finally, Defendants argue that the remaining ERISA claim against  
19 Yakima Regional fails because Plaintiff did not allege sufficient facts  
20 to support an ERISA section 510 claim. ERISA section 510 provides:

21 It shall be unlawful for any person to discharge, fine,  
22 suspend, expel, discipline, or discriminate against a  
23 participant or beneficiary for exercising any right to which  
24 he is entitled under the provisions of an employee benefit plan  
25 . . . or for the purpose of interfering with the attainment of  
26 any right to which such participant may become entitled under  
the plan, this subchapter, or the Welfare and Pension Plans  
Disclosure Act.

29 U.S.C. § 1140. To establish a prima facie claim under ERISA section  
510, a plaintiff must show the existence of 1) prohibited employer

1 conduct 2) taken for the purpose of interfering with 3) the attainment  
2 of any right to which the employee may become entitled.<sup>4</sup> *Crawford v. TRW*  
3 *Auto. U.S. LLC*, 560 F.3d 607, 613 (6th Cir. 2009); *Gavalik v. Cont'l Can*  
4 *Co.*, 812 F.2d 834, 851 (3d Cir. 1987). The "taken for the purpose of  
5 interfering" causation prong requires the plaintiff to show that the  
6 exercise or receipt of his benefit-plan rights was the "motivating force  
7 behind the discharge." *Bogue v. Ampex Corp.*, 976 F.2d 1319, 1327 (9th  
8 Cir. 1991) (quoting *Kimbrow v. Atl. Richfield Co.*, 889 F.2d 869, 881 (9th  
9 Cir. 1989)).

10 Plaintiff submits that he need not "plead the Defendants' specific  
11 intent to violate the Plaintiff's rights under ERISA," citing to *Heimann*  
12 *v. National Elevator Industry Pension Fund*, 187 F.3d 493, 509 (5th Cir.  
13 1999), *overruled in part on other grounds by Arana v. Ochsner*, 338 F.3d  
14 433 (5th Cir. 2003). The Court agrees the Fifth Circuit's statement,  
15 "[t]he use of the term 'specific intent' or other ERISA terminology is  
16 not sacramental or necessary to the pleading of a cause of action under  
17 § 502(a)," is still good law following *Iqbal* and *Twombly*. *Iqbal* and  
18 *Twombly* do not require the use of exact words to satisfy each element of  
19 a claim but rather requires the asserting party to allege facts to  
20 support each element of the asserted claim. Here, the inquiry is whether  
21 the Complaint's factual allegations, when all reasonable inferences are  
22 drawn therefrom, sufficiently allege an ERISA section 510 claim, which

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24 <sup>4</sup> A plaintiff may either present direct evidence or circumstantial  
25 evidence; if circumstantial evidence is used, the court employs a burden-  
26 shifting analysis. *Ritter v. Hughes Aircraft Corp.*, 58 F.3d 454, 457  
(9th Cir. 1995).

1 is focused on employment decisions that are motivated by an intent to  
2 interfere with the employee's right to employment benefits. See *Adams v.*  
3 *Koppers Co., Inc.*, 684 F. Supp. 399, 401 (W.D. Pa. 1988) (recognizing  
4 that section 510 is directed at employment decisions).

5 The Court finds the Complaint does not satisfy this inquiry.  
6 Although the Complaint alleges that Plaintiff was 52-years-old at the  
7 time of termination and that he was replaced by a younger worker, these  
8 facts by themselves are insufficient to justifiably infer that Defendants  
9 terminated Plaintiff's employment to specifically interfere with his  
10 right to enjoy his employment benefits. There are no alleged facts  
11 showing that Plaintiff had excessive medical costs or that Defendants  
12 knew that Plaintiff planned on retiring soon. Accordingly, the  
13 Complaint's factual allegations, even when justifiable inferences are  
14 taken therefrom, are insufficient to support an ERISA section 510 claim.  
15 Cf. *Hollowell v. Cincinnati Ventilation Co.*, 711 F. Supp. 2d 751, 760  
16 (E.D. Ky. 2010) (dismissing ERISA section 510 claim because the plaintiff  
17 failed to allege facts to support specific intent element); *Gordon*, 2010  
18 WL 925785 at \*6 (same); *Hughes*, 2010 WL 890982 at \*6 (same). Therefore,  
19 the Court **grants in part** Defendants' motion: the ERISA section 510 claim  
20 is dismissed.<sup>5</sup>

## 21 2. Outrage Claim

22 Defendants contend Plaintiff's outrage claim is 1) preempted by the  
23 Washington Industrial Insurance Act (WIIA), RCW 51.24.020, 2) duplicates  
24 his WLAD claim, and 3) not supported by sufficiently alleged facts.

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26 <sup>5</sup> The Court grants Plaintiff leave to amend his Complaint to add  
facts to support an ERISA section 510 claim.

1 Plaintiff contends that his post-employment emotional distress claim is  
2 not preempted by the WIIA, does not duplicate the WLAD claim if proper  
3 jury instructions are used, and does state a claim for relief.

4 Plaintiff concedes that the emotional-distress component of his  
5 outrage claim is limited to his post-employment emotional distress.  
6 Accordingly, Defendants' motion is **granted in part**: Plaintiff may not  
7 recover any emotional distress damages suffered during his employment  
8 because such are generally preempted by the WIIA. *See Cagle v. Burns &*  
9 *Roe, Inc.*, 106 Wn.2d 911, 921 (1986) (recognizing that the WIIA bars tort  
10 claim damages occurring while acting in the course of employment); *but*  
11 *see Birklid v. Boeing Co.*, 127 Wn.2d 853, 869 (1995) (recognizing that  
12 under certain circumstances dignitary torts and statutory offenses in the  
13 nature of dignitary torts are not barred by the WIIA).

14 In support of their duplication argument, Defendants cite to two  
15 Washington Court of Appeals decisions dismissing a claim that seeks the  
16 same damages as the plaintiff's discrimination claim. *Francom v. Costco*  
17 *Wholesale Corp.*, 98 Wn. App. 845, 864-65 (2000); *Anaya v. Graham*, 89 Wn.  
18 App. 588, 596 (1998). However, as U.S. District Court Judge Richard  
19 Jones recognized in *Johnson v. Grady Way Station, LLC*, 2009 WL 960097,  
20 \*2 (W.D. Wa. 2009), dismissal of an outrage claim is a harsh and  
21 unnecessary remedy because duplicative-damage issues can be eliminated  
22 through the use of appropriate jury instructions. The Court finds Judge  
23 Jones' reasoning persuasive. Further, Plaintiff's outrage claim is not  
24 premised upon an allegation that Defendants discriminated against  
25 Plaintiff, but rather that they falsely accused Plaintiff of having an  
26 inappropriate relationship with an employee. Accordingly, Plaintiff's  
age-discrimination and outrage claims are based on different facts. *Cf.*

1 *Jacobson v. Wash. State Univ.*, 2007 WL 26765, \*11 (E.D. Wash. Jan. 3,  
2 2007) (finding that outrage claim was based on different facts than civil  
3 rights claim). The Court **denies in part** Defendants' motion.

4 Defendants next argue that dismissal of the outrage claim is  
5 required under Rule 12(b)(6). A plaintiff pursuing an outrage claim,  
6 otherwise referred to as the intentional infliction of emotional  
7 distress, must satisfy three elements: "(1) extreme and outrageous  
8 conduct; (2) intentional or reckless infliction of emotional distress;  
9 and (3) actual result to the plaintiff of severe emotional distress."  
10 *Rice v. Janovich*, 109 Wn.2d 48, 61 (1987); see *Birkliid*, 127 Wn.2d at 867  
11 (listing factors for court to consider). To establish the first prong,  
12 the plaintiff must show that the defendant's conduct was "so outrageous  
13 in character, and so extreme in degree, as to go beyond all possible  
14 bounds of decency, and to be regarded as atrocious, and utterly  
15 intolerable in a civilized community." *Grimsby v. Samson*, 85 Wn.2d 52  
16 (1975) (citing Restatement (Second) Torts § 46).

17 The Court finds the Complaint alleges sufficient facts to survive  
18 a Rule 12(b)(6) motion. Assuming the veracity of Plaintiff's facts,  
19 Defendants accused Plaintiff of having an inappropriate relationship with  
20 a coworker. According to Plaintiff, this was not true. Nonetheless,  
21 based solely on this unfounded accusation of a relationship with a  
22 coworker, which was not against a work policy, Defendants terminated  
23 Plaintiff's employment. As a result of losing his employment, Plaintiff  
24 suffered severe financial damages. Plaintiff also suffered extreme  
25 emotional distress given the nature of the accusation and the fact that  
26 he was married. Given these allegations, the Court **denies in part**  
Defendants' motion to dismiss the outrage claim.

1        3.    Defamation

2        Defendants seek dismissal of Plaintiff's defamation claim because  
3 there is no allegation of abuse or actual malice by the individual  
4 Defendants and therefore the defamation claim is deficient as to them and  
5 Yakima Regional. Further, Defendants contend that there is a conditional  
6 privilege surrounding the investigation of an employee's complaint.  
7 Plaintiff maintains that the defamation claim survives because he  
8 sufficiently alleged that Defendants acted negligently and without  
9 reasonable care, or acted intentionally or with reckless disregard, as  
10 to the truth or falsity of such accusation.

11        Defendants are correct that a conditional privilege applies to  
12 complaints and statements made during an investigation of an employee's  
13 alleged sexual harassment. *Lawson v. Boeing Co.*, 58 Wn. App. 261, 266-67  
14 (1990). However, this privilege can be lost through abuse. *Id.* at 267.  
15 Accordingly, a defamation claim survives a motion to dismiss if there are  
16 facts showing that the investigating employees knew of, or recklessly  
17 disregarded, the falsity of a statement during the investigation.

18        Here, Plaintiff alleges that the coworker's assertion that he was  
19 having an inappropriate relationship with him/her was false. Further,  
20 Plaintiff alleges not only that the Defendants knew or recklessly  
21 disregarded the falsity of this assertion, but that they then  
22 communicated this false assertion to other Yakima Regional employees and  
23 others. It is also reasonably inferred, given the length of Plaintiff's  
24 employment at Yakima Regional, that Defendants knew Plaintiff was  
25 married. Accordingly, the Court **denies** Defendants' motion to dismiss the  
26 defamation claim, finding the Complaint's allegations sufficient to  
survive a Rule 12(b)(6) motion.

1       4.   Age Discrimination

2       The individual Defendants ask the Court to dismiss the WLAD age-  
3 discrimination claim because there are insufficient facts to support an  
4 allegation that they discriminated against Plaintiff on the basis of his  
5 age. The Court finds the Complaint alleges sufficient facts to retain  
6 a WLAD claim against Defendants Beaudry and Murphy-Hines. The Complaint  
7 alleges that Defendant Beaudry advised Plaintiff of the coworker's  
8 complaint, investigated the complaint, and then, along with Defendant  
9 Murphy-Hines informed Plaintiff that his employment was terminated.  
10 Accordingly, the Court **denies** the motion as to these two Defendants.  
11 However, the Court **grants** the motion as to Defendant Brian Weish because  
12 there are no facts indicating his involvement in age discrimination.

13   **C. Conclusion**

14       Accordingly, for the reasons given above, **IT IS HEREBY ORDERED:**

15       1. Defendants' Motion to Dismiss Certain Claims for Failure to  
16 State a Claim Under Rule 12(b)(6) (**ECF No. [19](#)**) is **GRANTED** (ERISA section  
17 510 claim, and the WLAD claim against Mr. Weish are dismissed) **AND DENIED**  
18 (remainder) **IN PART**.

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S/ Edward F. Shea  
EDWARD F. SHEA  
United States District Judge